



THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard:

Opinion No. 0-5214
Re: Liability of Defense Supplies
Corporation for tax imposed upon
the use of motor fuel in Texas
by Chapter 184, Article XVII,
Acts 1941, 47th Legislature, and
related questions.

In your letter of April 10, 1943, you submit the following facts:

"The Defense Supplies Corporation, a subsidiary of the Reconstruction Finance Corporation created pursuant to the provisions of Section 5(d) of the Reconstruction Finance Corporation Act, as amended, for the purpose of aiding the Government in its National Defense Program has entered into contract with the Shell Oil Company and various other major refiners of motor fuel to purchase their output of high octane aviation gasoline which said purchases. . . .are made in order to assure that the United States Government will have sufficient supplies of such aviation gasoline to serve the Army, Navy and lease-land requirements.

"The Defense Supplies Corporation after acquiring the motor fuel or title thereto will follow a planned program of distributing the gasoline in a manner that will best serve the war efforts. Part of the gasoline will be sold and delivered by the Defense Supplies Corporation to the Army and Navy, part to fill lease-land requirements and part will be resold to Texas distributors to fulfill their contracts with the Army, Navy and commercial aviation companies.

Under the above factual conditions, the Texas distributors have asked: (1) may they sell aviation gasoline tax-free to the Defense Supplies Corporation? and (2) may they repurchase such part of the gasoline as is allotted to them from the Defense Supplies Corporation without paying the State

tax?

Apparently the Defense Supplies Corporation was authorized under Section 606b, 15 U. S. C. A., and created "in order to aid the Government of the United States in its national defense program. . .". It is a Federal agency, or instrumentality.

Section 610, 15 U. S. C. A., expressly exempts such corporation from taxation, including sales, use, storage, and purchase taxes.

The legal incidence of our motor fuel tax is upon the ultimate user or consumer of the motor fuel for the propulsion of motor vehicles upon the highways of the State of Texas, and not upon the seller or vendor of motor fuel. Article 7065b-2 (a), V. A. C. S.

Since this is a federal instrumentality, performing a federal function in insuring an adequate supply of high octane gasoline to aid the war effort, not using but storing gasoline, and expressly exempt from State taxation, we are of the opinion that both of your questions should be answered in the affirmative.

Nothing herein should be construed as holding, however, that motor fuel purchased from the Defense Supplies Corporation and subsequently sold or used by a "distributor" is tax exempt.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Thos. B. Duggan, Jr.
Thos. B. Duggan, Jr.
Assistant

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APPROVED APRIL 28, 1943
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman